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11 Attorneys for Defendant  
JOHN J. COTA

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA,

Case No. CR 08-0160 SI

16 Plaintiff,

17 v.  
18 DEFENDANT JOHN J. COTA'S NOTICE  
19 OF MOTION AND MOTION TO DISMISS  
JOHN J. COTA,  
20 Defendant.  
21 FALSE STATEMENT CHARGES

Date: July 18, 2008

Time: 11:00 a.m.

Judge: Honorable Susan Illston

22 Speedy Trial Act; Excludable Time Through  
Disposition, 18 U.S.C. § 3161 (h)(1)(F)

23 TO UNITED STATES ATTORNEY JOSEPH P. RUSSONIELLO:

24 PLEASE TAKE NOTICE that at 11:00 a.m. on July 18, 2008 or as soon thereafter as  
25 counsel may be heard in the above entitled Court, Defendant JOHN J. COTA ("Captain Cota") will  
26 and hereby does move this Court for an order dismissing Counts One and Two of the Superseding  
27

1 Indictment in this matter pursuant to Rule 12(b)(2) and (3) of the Federal Rules of Criminal  
2 Procedure. Specifically, Captain Cota seeks dismissal based on the grounds that the charges lack the  
3 required elements under 18 U.S.C. Section 1001 because: (a) the alleged false statements were not  
4 made within the jurisdiction of the executive, legislative or judiciary branch of the government of the  
5 United States, (b) it violates the *Ex Post Facto* Clause of the Constitution to prosecute the alleged  
6 2006 and 2007 false statements, (c) the alleged false statements were not material, and (d) the  
7 questions which led to the allegedly false statements were fundamentally ambiguous nor was there  
8 any notice given that the communications at issue were subject to Section 1001, thereby negating  
9 any willful and knowing intent. Therefore, Counts One and Two are legally deficient and should be  
10 dismissed without leave to amend.

11 This motion is based on this Notice of Motion and Motion, the attached Memorandum of  
12 Points and Authorities and exhibits in support thereof, the complete files and records in this matter,  
13 and upon such other matters as may be presented to the Court at the time of the hearing.

14 Respectfully submitted,

15  
16 DATED: June 13, 2008.

KIRKPATRICK & LOCKHART  
PRESTON GATES ELLIS LLP

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18 By: /s/ Jeffrey L. Bornstein  
19

20 Jeffrey L. Bornstein, Esq.  
21 Barry M. Hartman, Esq., *Admitted Pro Hac Vice*  
22 Luke G. Anderson Esq.  
Christopher R. Tate, Esq., *Pro Hac Vice pending*

23 Attorneys for Defendant  
24 JOHN J. COTA  
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